

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6592

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DION EDWARD CHEESE, a/k/a M. C. Cheese, a/k/a
Fred Jackson,

Defendant - Appellant.

Appeal from the United States District Court for the Southern
District of West Virginia, at Beckley. Charles H. Haden II,
District Judge. (CR-97-155, CA-00-1209-5)

Submitted: September 29, 2003

Decided: November 3, 2003

Before WIDENER, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dion Edward Cheese, Appellant Pro Se. Michael Lee Keller, OFFICE
OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Dion Edward Cheese seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000). The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2000). The magistrate judge recommended that relief be denied. The district court adopted the report of the magistrate judge as to two claims, but recommitted the case for further inquiry into the third claim. The magistrate judge issued a recommendation on that claim and advised Cheese that the failure to file timely objections could waive appellate review of a district court order based on that recommendation. Despite this warning, Cheese failed to object. The district court adopted the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Cheese has waived appellate review of the claim concerning the state drug laboratory by failing to file objections after receiving proper notice.

Cheese did timely object to the magistrate judge's recommendation for two claims in the initial report. An appeal may not be taken from the final order in a § 2255 proceeding unless a

circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2000). A certificate of appealability will not issue for claims addressed by a district court absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, ___, 123 S. Ct. 1029, 1039 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Cheese has not made the requisite showing as to these claims.

We deny leave to proceed in forma pauperis, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED